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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,123	02/03/2000	Dominique D. Messerli	8932-114	7121

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JONES DAY
51 Louisiana Aveue, N.W
WASHINGTON, DC 20001-2113

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT PAPER NUMBER

3738

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/497,123	Applicant(s) MESSERLI ET AL.	
	Examiner Brian E Pellegrino	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/30/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,7,9,14,15,19,25,26,28-41,43-62 and 64 is/are pending in the application.
- 4a) Of the above claim(s) 30,31,33,34,37,38,49,50,52,53,56 and 57 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 40,41,43-48,51,54,55 and 58 is/are allowed.
- 6) ☒ Claim(s) 1,4,7,9,14,15,19,25,26,28,32,35,36,39 and 59-62 is/are rejected.
- 7) ☒ Claim(s) 2,29 and 64 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,4,9,14,15,25,26,28,32,35,36 are rejected under 35 U.S.C. 102(b) as being anticipated by Reitzel (4497419). Fig. 1 shows an end member **10** with a first portion **16** having a top, flat planar surface **24** and a perimeter edge **34** with first and second offset channels **26** extending therefrom. Fig. 2 shows a second portion **20** and also a shoulder **38** that joins the first and second portions. Additionally there is a plurality of resilient tabs **78, 80** on the second portion that flex inward upon insertion into the receiving portion shown in Fig. 3. Please note that the intended use, as set forth in the claims, carries no weight in the absence of any distinguishing structure. Clearly, this device is capable of being used with an implant and having the top surface adapted and configured to engage bone.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7,19,39,59-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reitzel '419. Reitzel is explained supra. However, Reitzel fails to disclose the top

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surface as being oval or the material for the end member is made of metal or to use four tabs. Note that Reitzel does disclose end members can be made of metal, col. 1, lines 13,14. Regarding claim 7, it would have been an obvious matter of design choice to modify the shape of the end member, since applicant has not disclosed that using an oval shape provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the rounded end member as taught by Reitzel or the claimed oval shape in claim(s) 7 because both end members perform the same function of providing top surface engaging members. Regarding claim 19, it would have been obvious to one of ordinary skill in the art to substitute metal as mentioned by Reitzel for the end member in order to provide a more rigid end member. With respect to claims 39,59 it would have been an obvious matter of design choice to modify the number of tabs used, since applicant has not disclosed that using four tabs provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the number of tabs or arms taught by Reitzel or the claimed four tabs in claim(s) 39,58 because both end members with tabs perform the same function of being secured in the receiving device.

Response to Arguments

Applicant's arguments with respect to claims 1,59 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 2,29,64 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 40,41,43-48,51,54,55,58 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached Monday-Thursday between 9:00 A.M. and 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703) 308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Brian E. Pellegrino

Primary Examiner
TC 3700, AU 3738

A handwritten signature in black ink that reads "Brian E. Pellegrino". The signature is written in a cursive, flowing style.